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## **Kurzarbeit or short-time work in Slovak Republic?**

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**Abstract.** The new legal framework introduces a novel concept of short-time work involving distinct features from the conventional system. The new Slovakian "kurzarbeit" model is intended to serve as a response to economic fluctuations and sudden interruptions of industrial or work processes. The legal analysis focuses on a comparison of the legal framework in the Short-time Work Support Act and the Slovak Labour Code, with regard to the partial duality of the legal regulation of this labour law institution. The authors aim to clarify the mechanism of functioning and anticipated impacts on the participants of labour relations. The legal analysis focuses on a comparison of the legal framework in the Short-time Work Support Act and the Slovak Labour Code, with regard to the partial duality of the legal regulation of this labour law institution. The aim of the contribution is to point out the significant benefits of the recently established labor law institute, also based on official statistical data of the Ministry of Labour, Social Affairs and the Family of the Slovak Republic.

**Keywords.** Short-time work, kurzarbeit, interruption of industrial or work processes, financial support.

### **1. Social and legal conditions for the adoption of the new legislation**

While there has been a relative stability in significant changes to labour regulations over the past thirty years, the last three years have seen a considerable revolution. This transformation's causes are not solely attributable to legislative adjustments driven by the COVID-19 pandemic, but also the requisite fulfilment of European directives. Positive aspects of these changes include the introduction of a new barrier to prevent unemployment on the employer's side in the form of short-time working support, also known as the German kurzarbeit. This tool is intended to cope with potential fluctuations in production or working processes and ensure continued employment for workers.

If one were to characterize Act No. 215/2021 Coll. on support during short-time work as amended, the term "ambivalent" would likely best capture its essence, underscoring the dual nature of the short-time work law. The concept of kurzarbeit, (Schulten & Muller, 2020).

embedded in various linguistic expressions, is anticipated to provide fundamental assistance to employers impacted by social, humanitarian, or economic crises, leading to the inability to assign work to employees within a specific time-limited horizon. The term “Kurzarbeit” is mostly limited to the German-speaking area - Germany, Austria, Switzerland - and Sweden. In other countries, such as Belgium, France, Great Britain, Luxembourg and the Netherlands, the term “transitional” or “partial unemployment” is used. These expectations were subject to extensive discussions among diverse social partners at both national and local levels, gaining formulation during the preparatory phase of the Short-Time Work Act within public and professional debates in August 2020 regarding the introduction of the “kurzarbeit” concept into the Slovak legal framework. The Short-Time Work Act came into existence through a notably unconventional administrative process. Initially, the originator disseminated the document titled “Information on the preparation of the concept of introducing the short-time work system “Kurzarbeit” into the Slovak legal order for consultation with business entities.” Later, in August 2020, a document titled “Concept for the introduction of the shortened work regime “Kurzarbeit” into the Slovak legal order” was formulated, involving repeated discussions and comment procedures with the public during its development. Despite the subsequent adoption of the law, it surprisingly did not fully integrate the input gathered during the public discussions.

Despite its concise structure comprising only 12 paragraphs, the Short-Time Work Act suffers from vague formulations and the inclusion of terms and contexts from other legal regulations, often lacking legislative references. There is a frequent intertwining of labor law and commercial law without an acknowledgment of the disparities in the employed terminology. The legal provisions determining the conditions for an employer's application to receive support during short-time work fail to account for internal conditions shaped by the employers themselves through internal company regulations, collective agreements, other accords with social partners, or individual employment contracts (Rak & Čiefová, 2021). The lack of legal definitions for terms and formulations, enabling diverse legal interpretations, coupled with connections to other legal frameworks in areas such as social security law, civil law, commercial law, personal data protection, collective bargaining law, and employment services law, among others, has given rise to a new labor law (and administrative) agenda for employers, employee representatives, and employees, diverging from the intended functional tool (Švec & Olšovská, 2022).

Given that the legislator prohibits the unilateral utilization of the support tool by employers and ties it to the necessity of reaching an agreement with employee representatives or employees, in the absence of employee representatives, a new dimension is introduced into individual and collective labor relations (Barancová, 2016).

The legislator articulated the objective of the new law in the explanatory report as *"there is a reasonable need to embed in the Slovak legal order a permanent, stable, and independent instrument of passive labor market policy established by law. The crux of this tool should be the provision of legally claimable support, explicitly earmarked for the payment of employee wage compensation or salary compensation at times when the employer is unable to assign work to employees within the initially agreed scope, resulting in what is known as "short-time work." The draft law outlines the scope, conditions, provision mechanism, support amount, and other decisive elements of its provision"* (Explanatory report, general part of the Short-Time Work Act) The primary objective of the legislation is to offer employers partial financial coverage for employee wage or salary compensation when, due to external factors, they are unable to assign work within the initially agreed-upon scope. Secondly, it seeks to foster job sustainability and enhance the competitiveness of both employers and self-employed

individuals during periods of economic downturns, recessions, and crisis situations (Explanatory report, general part of the Short-Time Work Act). Consequently, the essence of the law lies in establishing a legal framework for providing support during short-time work, facilitating the partial coverage of employer wage expenses, and compensating employee wages when external factors limit the employer's operations. A statutory requirement for support payment is the non-termination of the employee's position for at least the subsequent two months.

In keeping with the above, the Slovak legislator has introduced another (continuous) form of obstacle to work on the part of the employer under particular circumstances. The objective is to manage the presence or absence of employees during reduced work, a period when, for specific reasons, assigning agreed-upon tasks becomes (partially or wholly) impracticable. Concurrently, there is legally claimable and purpose-bound support for this work obstacle, known as "kurzarbeit." The core purpose of kurzarbeit is to address a particular "shock" disrupting the employer's production or work processes, where preparation, anticipation, and implementation of organizational measures are infeasible or ineffective, all without resorting to workforce reductions.

As per the recent amendment in Section 142, paragraph 5 of the Labor Code, if the employer, following an agreement with employee representatives or, in the absence of such representatives, with the employee directly, seeks support during reduced work under a specific regulation, the employer is obliged to offer the employee wage compensation at a rate of at least 80% of their average earnings throughout the duration of this work obstacle. The regulations outlined in paragraphs 1 to 4 and Section 250b, paragraph 8 of the Labor Code concerning the amount of wage compensation are not applicable in this case. Should the employer fail to secure support for the employee's workplace during reduced work, the employee retains the right to wage compensation according to the stipulations in paragraphs 1 to 4 or Section 250b, paragraph 8 of the Labor Code.

Defining kurzarbeit as an impediment to work on the employer's part in accordance with Section 142, paragraph 5 of the Labor Code imposes on the employer the primary responsibility of exploring the potential application of this specific work obstacle. Simultaneously, the employer must assess the satisfaction of the substantive legal prerequisites for implementing this type of work obstacle as outlined in Section 142, paragraph 5 of the Labor Code. Furthermore, the employer must ascertain the fulfillment of additional substantive legal conditions referenced in this provision, which are encapsulated in the Short-Time Work Act. Within this structured system, when endeavoring to join the short-time work support mechanism, the employer needs to consider the interplay of individual provisions from both legal frameworks. This consideration extends beyond the provisions primarily influencing the introduction of kurzarbeit, requiring the employer to navigate and utilize various other labor law principles. For instance, the presence of employee representatives and their potential plurality in the workplace will necessitate the employer to engage with the authorized entity to make pertinent decisions. The employer must delineate the individuals to be encompassed in the total count, demonstrating the impossibility of work assignment. It is imperative for the employer to discern all the objective and subjective factors of the legal framework, considering which agreements must be reached with employee representatives and employees to participate in the short-time work support system. Equally important will be the identification of the mutual relationship between the simultaneous application of several types of obstacles to work on the part of the employee at the time of the existence of the obstacle to work on the part of the employer according to Section 142, paragraph 5 of the Labor Code.

The legislation lacks specific quantitative or qualitative criteria for identifying the occurrence of this obstacle to work on the part of the employer. Instead, it defers entirely to the substantive legal conditions outlined in the provisions of the Short-Time Work Act. The new provision in Section 142, paragraph 5 of the Labor Code essentially delimits the scope of the participation right of employees or employees' representatives. This is somewhat redundant, as a similar substantive legal condition for introducing support during short-time work is also present in Section 3, paragraph 1, letter d), point 1 of the Short-Time Work Act. Simultaneously, it delineates the relationship of this new obstacle to work on the part of the employer concerning other types of obstacles to work, namely Section 142, paragraphs 1 to 4 of the Labor Code (Barancová, 2019), or the transitional provision in Section 250b, paragraph 8 of the Labor Code. This refers to a temporarily introduced obstacle to work on the part of the employer due to the restriction or cessation of the employer's activity based on the decision of the competent authority or as a result of the declaration of an extraordinary situation, emergency, or state of emergency (Provision Section 250b, par. 8 LC: *“In cases where an employee is incapable of performing their duties, either wholly or partially, due to the suspension or curtailment of the employer's operations, as directed by the competent authority or resulting from the declaration of an extraordinary situation, emergency, or state of emergency, it qualifies as an employer's obstacle to work. During such situations, the employee has the right to receive wage compensation amounting to 80% of their average earnings, or at least the minimum wage. It's important to note that the provisions specified in Section 142, paragraph 4, remain unaffected.”*)

To enable the employer to subsequently submit an application for support during reduced work, and consequently, to have the option of later invoking an obstacle to work on the part of the employer under Section 142, paragraph 5 of the Labor Code, Section 2 of the Short-Time Work Act outlines a set of fundamental legal conditions.

The satisfactory fulfillment of these conditions will be pivotal for the employer's success in securing support during periods of reduced work. Some of the essential conditions that must be met to qualify for employer support during short-time work include:

- a) the requirement for a specified timeframe during which reduced work is in effect,
- b) the existence of an external factor that will result in limiting the employer's activity,
- c) the occurrence of limitations on the employer's activity, whether wholly or partially, due to an external factor, preventing the assignment of work for at least 1/3, or a minimum of 10% of the established weekly working time (this condition applies to situations affecting the entire employer or specific parts like organizational units or establishments),
- d) the requirement for the existence of a specific type of individual employment relationship, enabling the identification of natural persons in the legal status of employees at the employer, who are assigned work in the aforementioned context,
- e) the necessity of meeting the legal characteristics of a natural or legal person as an employer who will apply for support during short-time work according to the Social Insurance Act and not according to the relevant provisions of LC,
- f) the necessity of maintaining organizational separation within the employer, specifically in the form of an organizational unit or establishment, if the goal is to limit the activity of a distinct part of the employer rather than the entire entity.

The fundamental prerequisites for an employer seeking support during reduced work involve meeting criteria for obtaining entitled support. This support is designated for compensating employees' wages when the employer is unable to assign work to at least one-third of the workforce, amounting to a minimum of 10% of the established weekly working time. The support during short-time work, available for a maximum of six months within a span of 24 consecutive months, may be extended by the government of the Slovak Republic through a regulation if prompted by external factors, as previously highlighted. Applicants eligible for assistance from the short-time work system include both natural persons and legal persons recognized as employers under the LC. As per the aforementioned law, it was stipulated that the employer, covering a specified employee range, contributes insurance premiums to the basic unemployment insurance fund to finance support during short-time work. From this fund, the Social Insurance Agency disburses the amount requested by the relevant provider for the payment of support during reduced work by the employer. Additionally, the Government of the Slovak Republic holds the authority, through regulation, to exempt the employer receiving support during reduced work from the obligation to pay insurance premiums and mandatory contributions for old-age and pension savings, or their portions, in instances of declared emergency situations, states of emergency, or extraordinary circumstances. The employer is entitled to seek support during short-time work for employees classified as natural persons in an employment relationship. The eligible group comprises only those employees with an employment relationship lasting a minimum of one month as of the support application submission date, and this employment connection must persist at the time of the application for support.

The employer can request support only for the following types of employees:

- A minimum of 1/3 of the employees or segments for whom, due to an external factor, the employer is incapable of assigning work, to an extent of at least 10% of their established weekly working time,
  - those with an employment relationship lasting at least one month as of the application submission date for support,
  - whose notice period doesn't conclude on the date of applying for support (as per Section 62 LC)
  - who have used up their leave entitlement from the previous calendar year at the time of applying for support, and concurrently, the employer or employees cannot transition to another job within the agreed-upon type of work.

In terms of the eligibility criteria for support provision, it is extended to the employer when operating under short-time work conditions. This includes instances where the employer has paid insurance, social insurance premiums, and the mandatory contribution to old-age and pension savings on the date of submitting the support application. The coverage spans the entire 24-month period immediately preceding the calendar month in which the employer seeks support (Švec & Toman, 2023).

## **2. The research objectives, methodology and tools**

This expert article discusses recent amendments to Slovak legislation concerning the implementation of the new law on support for short-time working, which was adopted in 2021 during the pandemic. The legal interpretation focuses on a comparison of the legal regulation in the Act on Support during Short-Time Work and the Slovak Labour Code, given the partial duality of the legal regulation of this labour law institute. The authors focus on the clarification

of the mechanism of functioning and the expected impact on the parties involved in labour relations. Based on official statistical data from the Ministry of Labour, Social Affairs and Family of the Slovak Republic, the aim of this paper is to highlight the significant achievements of the recently introduced labour law institute. The primary sources were the relevant labour law regulations, namely the Slovak Labour Code, the Act on Support for Reduced Working Hours and other relevant labour law regulations, together with relevant publications related to the issue described. Qualitative methods were used in the thesis, with an emphasis on techniques used in legal science, including content analysis, namely document and data analysis, description, induction and deduction.

### **3. Determination and amount of financial support**

As defined by the Short-Time Work Act, the support serves as a mechanism for partially offsetting the employer's expenses related to compensating employees for work obstacles stemming from restricted activity. Specifically, the support is allocated for each hour of the obstacle, with the actual amount determined by predefined maximum limits. Adhering to the aforementioned, where support serves as a partial reimbursement of costs, its amount is limited to 60% of the employee's average hourly earnings in the relevant calendar month. This translates to a maximum of 60% of 1/174 times the average wages of an employee in the Slovak economy, as stipulated by the Statistical Office of the Slovak Republic for the calendar year two years preceding the year in which support is rendered. In the development of the applicable law, it was made clear that the guiding principle is the 60:20:20 model. In this framework, the state contributes 60% to cover the costs, the employer bears 20% as part of regular expenditures, and the employee actively participates by relinquishing 20% of the amount, playing a role in preserving their employment. As of 2023, the support amount for one hour of employer-obstacle-related work is calculated according to a defined formula:

$$60\% \text{ of } 1/174 \times 2 \times \text{€}1211 = 60\% \text{ of } \text{€}13.9195 = \text{€}8.3517 \text{ per hour of work.}$$

In 2023, the support is calculated from the average hourly earnings at a maximum of €13.9195.

Starting March 1, 2022, with the enactment of kursarbeit, an insurance system was instituted with the aim of assisting the Slovak economy in retaining employment during economic crises, recessions, or other crises. This initiative, modeled after neighboring European countries, seeks to bolster the competitiveness of companies and mitigate adverse impacts on the labor market. In accordance with the updated provision of the Social Insurance Act, (Act no. 461/2003 Coll. on social insurance, as amended) a new obligation mandates the payment of insurance premiums to the newly established PFP levy fund. Specifically, this obligation applies to employers with a workforce under employment relationships and amounts to 0.5% of the assessment base. The assessment base is calculated as seven times the average salary of employees determined two calendar years prior to the year in which insurance premiums are due.

Between March, when short-term work commenced, and October 31, 2022, labor offices and labor headquarters disbursed support amounting to €20,250,680, aiding 81,000 jobs on a monthly basis. As of the same date, the total requested amount exceeded €24 million, encompassing withdrawn requests and pending decisions. Support during short-time work has

been extended to around 272 employers, with an average support duration ranging from 2 to 3 months. These employers availed support for 81,001 monthly jobs. Notably, the highest number of employees received support during the initial four months, peaking at 29,139 applicants in April 2022, coinciding with the receding pandemic. In terms of sectors, industrial production garnered the predominant share of support, exceeding €17 million, considering it accommodates the largest segment of the Slovak workforce. The transport and storage sector received support exceeding €1 million, contributing to the backing of over a thousand jobs. In addition to the aforementioned sectors, support extended to administrative and support services (e.g., travel agencies, motor vehicle rental, sports equipment, and others), as well as professional, scientific, and technical activities (e.g., legal, accounting, or auditing services). According to data from the Social Insurance Agency, between March 1, 2022, and June 30, 2022, €31,631,918.72 was disbursed for the new type of insurance premium, with a drawdown of €6,482,654.17 during the same period. This indicates that the insurance premium has accumulated sufficient financial resources for continuous and ongoing support. As per Section 12 of the Short-Time Work Act, the Labor Center is slated to provide support in 2022 and 2023, with a capped total of €20 million per calendar year. Considering contributions to date, it's likely that over €77 million has been amassed in insurance premiums for short-time work in 2022 alone.

#### **4. Conclusion**

Based on the preceding analysis, one can deduce that this job-saving instrument is likely to be financially viable. However, its accessibility raises questions given the relatively stringent conditions set by the state for its provision. Despite this, the implementation of short-time work support introduces a notably innovative aspect to Slovak labor law, serving as a crucial rescue mechanism during potential future crises. The destiny of the object is debatable, as the recently elected social democratic administration is contemplating altering its structure.

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